

Application No. 10/807,957
Amendment dated August 26, 2008
Reply to Office Action of June 26, 2008

REMARKS

The Applicant thanks the Examiner for his attention to this application.

Claims 1, 4, 5, 7, 9-20, 22, 23, 27-32 and 36 and 37 are pending in the application.

Claims 1, 17, 35 and 36 have been amended to indicate that the desired preamble signal component value is the energy per chip to the interference density desired by the mobile device. Support for this is found in, for example, paragraph 16 of the application as published.

ARGUMENTS

Claims 1, 4, 5, 7, 9-20, 22, 23, 27-32 and 36 and 37 are rejected under 35 USC §103 (a).

The applicant has amended claims 1, 17, 36 and 37. For the reasons below the applicant submits that these claims overcome the Examiner's objections.

Standard under 35 USC §103 (a)

The Office Action was issued following the United States Supreme Court's decision in the case of KSR Int'l Co. v. Teleflex Inc., No. 04-1350 (April 30, 2007). In light of the KSR decision, Applicant wishes to address various issues pertaining to a proper analysis under section 103.

The Examiner, by citing references and asserting a reason for combining elements from the references, has elected to base rejection upon a teaching, suggestion or motivation to select and combine features from the cited references. Applicant wishes to point out that the Supreme Court's KSR decision did not reject use of a "teaching, suggestion or motivation" analysis as part of an obviousness analysis, characterizing the analysis as "a helpful insight." KSR slip op. at 14-15.

When the Examiner chooses to base a rejection upon a teaching, suggestion or motivation analysis, the Examiner must satisfy the requirements of such an analysis. In particular, the Examiner must demonstrate with evidence and reasoned argument that there was a teaching, suggestion or motivation to select and combine features from the cited references. E.g., In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Moreover, the prior art must suggest the desirability of the combination, not merely the feasibility. In re Fulton, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004).

The applicant respectfully reminds the Examiner that, even after KSR, the following legal principals are still valid, having being endorsed by the Supreme Court or having been unaffected by its decision: (1) USPTO has the burden of proof and the issue of obviousness; (2) the USPTO must base its decision upon evidence and its must support its decision with articulated reasoning (slip op. at 14); (3) Merely demonstrating that all elements of the claimed invention exist in the prior art is not sufficient to support a determination of obviousness (slip op. at 14-15); (4) Hindsight has no place in an obviousness analysis (slip op. at 17); and (5) The applicant is entitled to a careful thorough, professional examination of the claims (slip OP. at 7, 23, in which the Supreme Court remarked that a poor examination reflected poorly upon the USPTO).

In the event that the cited references fail to disclose or suggest all of the elements recited in the claims, then combining elements from the references would not yield the claimed subject matter, regardless of the extent of any teaching, suggestion or motivation.

Claims Contain Elements Not Found in the Cited Art.

The Examiner has objected that claim 17 would have been obvious with regard to international application publication no. WO 00/08706 to Park having regard to US application patent no. 6,487,394 to Ue and US patent publication no. 2003/0134655 to Chen.

Claim 17, as amended, requires “a mobile device adapted to...transmit a desired preamble signal component value desired by the mobile device, the desired preamble signal component value being an energy per chip to in an interference density value”. For the reasons below, the application submits this is not found in the Park, Ue or Chen references.

As previously indicated, Park discloses a device and method for controlling the initial transmission power of a forward link channel in a mobile communication system. Page 14, line 19 in part describes how the initial forward link transmission power is determined. Equation three indicates that the initial transmission power is determined based on the pilot transmission power plus the (Eb/Nt)_{required} minus the(Eb/Nt)_{pilot_rx}.

The Examiner has admitted at page 4 of the current Action that Park fails to clearly teach evaluating signal to noise ratio and a desired signal component value.

The Examiner has asserted that the Ue reference is mainly used to teach evaluating a signal to noise ratio. The Examiner has further asserted that the Chen reference teaches the transmitting of a desired component value desired by the mobile device.

The applicant respectfully disagrees that the Chen reference teaches the “transmitting of a desired component value desired by the mobile device”. Specifically, the Examiner has pointed to paragraph 65, which contains the statement that

the feedback is transmitted on a reverse link established between the member subscriber station and the sector. Each sector receives the feedback from those member subscriber stations in the sectors coverage area that transmit on reverse link and adjusts the transmit level to ensure that the desired quality of service is delivered to all the member subscriber stations.

The Examiner has asserted that the “desired quality of service” shows that Chen is sending a desired component value. The applicant respectfully disagrees for the following reasons.

The Chen reference does not discuss signaling two separate values. Chen, in paragraph 71 indicates that all of the calculation for the power is done on the mobile station. In particular, the reference indicates that a required target decoder metric performance of the member subscriber station determines a forward link shared quality metric required for that subscriber station. Such a decoder metric may be e.g. a decoded frame error rate, a bit error rate and/or other decoder metric known to those skilled in the art. The member subscriber station measures the forward link share channel quality metric, compares the quality metric against a fixed or adapted threshold and sends power

control commands in accordance with the comparison results. In one embodiment, the power control commands comprise a stream of up or down commands.

Chen therefore teaches that the mobile device provides an up or down command, not a signal to noise value of a first signal and a desired preamble signal value.

Conversely, the current claim requires that two things be sent back from the mobile device. First, a received signal to noise ratio for the first signal and second, a desired preamble signal desired by the mobile device.

Further, as amended, the Chen reference does not discuss a desired energy per chip to interference density value being sent back to the base station, as now presented in the claim. None of the cited references teach the signaling of both a signal to noise ratio for the first signal and a desired energy per chip to interference density value desired by the mobile device. For these reasons withdrawal of the 35 USC §103 (a) is requested.

Similar reasoning applies to independent claims 17, 36 and 37.

With regard to the rejection of claims 9 and 27, the applicant respectfully disagrees that Ue teaches substituting a desired signal component value with a threshold value. The Examiner has pointed to Figure 12 of the Ue reference for this. However, the Examiner has admitted (Action of October 9, 2007, page 5, last line) that Park and Ue fail to teach a desired signal component value. Thus Ue cannot teach the substituting of a desired signal component value with a threshold value. Also, the signal to interference ratio of Figure 12 in Ue, as referenced by the Examiner, is used to set a transmission rate, not substitute a desired signal component with a threshold value. These claims therefore are distinct from the cited references.

The remaining pending claims are dependent upon the independent claims. Without conceding that Park, Ue and Chen disclose any of the elements in any dependent claims, the Applicant points out that the unsoundness of the rejections of independent claims 1 and 17, 36 and 37 makes the rejections of the dependent claims unsound as well.

The Chen reference would not be applied to Park.

In the Chen reference a feedback loop is provided. Specifically, the reference teaches that the signal component on a point-to-multipoint transmission is measured by each subscriber station and the subscriber station can report back on the reverse link whether the quality of service is too high or too low.

The “desired quality of service” relates to whether the traffic channel that is currently established is using too much or too little power and thus, the feedback loop indicates to the sector whether the mobile station desires more power or less power for the traffic channel.

Chen, in paragraph 71 indicates that all of the calculation for the power is done on the mobile station. In particular, the reference indicates that a required target decoder metric performance of the member subscriber station determines a forward link shared quality metric required for that subscriber station. In one embodiment, the power control commands comprise a stream of up or down commands.

The solution of feedback concerning a transmitted signal differs from the solution of setting an initial transmit power on an unrelated signal. Sending a message to a base station indicating that more power or less power is required would not be applicable on a non-established channel, since the non-established channel has no power level known by

Application No. 10/807,957
Amendment dated August 26, 2008
Reply to Office Action of June 26, 2008

the mobile device. Conversely, Park is directed to the power level of a non-established channel. One skilled in the art would therefore not combine the Park and Chen references.

Based on the foregoing submissions and amendments the Applicant submits that the application now overcomes the cited reference and reconsideration leading to allowance is respectfully urged.

Respectfully submitted,

/ Robert H. Kelly/

Robert H. Kelly, Reg. No. 33,922

KELLY & KRAUSE, L.P.
6600 LBJ Freeway, Suite 275
Dallas, Texas 75240
Telephone: (214) 446-6684
Fax: (214) 446-6692
robert.kelly@kelly-krause.com